

completely free of bark and are in actual use at the time of importation as packing materials for regulated articles may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40-9;

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials are totally free from bark, and apparently free from live plant pests; and

(iii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40-7, or meet all the importation and entry conditions required for the regulated article the solid wood packing material is used to move.

(3) *Not free of bark; used with regulated or nonregulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph, except that solid wood packing material from the People's Republic of China including Hong Kong must be imported in accordance with § 319.40-5(g), (h), and (i). Solid wood packing materials that are not completely free of bark and are in actual use as packing at the time of importation may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40-9;

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40-7.

(4) *Pallets moved as cargo.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Pallets that are completely free of bark and that are not in actual use as packing at the time of importation (i.e., pallets moved as cargo) may be imported without re-

striction under this subpart, except that:

(i) The pallets are subject to the inspection and other requirements in § 319.40-9; and

(ii) The pallets are accompanied by an importer document stating that the pallets were previously eligible for importation in accordance with paragraph (b) of this section and have not had wood added to them since that use. Solid wood packing materials other than pallets that are imported as cargo must be imported in accordance with the requirements of this subpart for raw lumber.

(c) *Loose wood packing materials.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Loose wood packing materials (whether in use as packing or imported as cargo) that are dry may be imported subject to the inspection and other requirements in § 319.40-9 and without further restriction under this subpart.

(d) *Bamboo timber.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Bamboo timber which is free of leaves and seeds and has been sawn or split lengthwise and dried may be imported subject to the inspection and other requirements in § 319.40-9 and without further restriction under this subpart.

(e) *Regulated articles the permit process has determined to present no plant pest risk.* Regulated articles for which a specific permit has been issued in accordance with § 319.40-4(b)(2)(i) may be imported without other restriction under this subpart, except that they are subject to the inspection and other requirements in § 319.40-9.

[60 FR 27674, May 25, 1995, as amended at 63 FR 50110, Sept. 18, 1998; 63 FR 69542, Dec. 17, 1998]

#### **§ 319.40-4 Application for a permit to import regulated articles; issuance and withdrawal of permits.**

(a) *Application procedure.* A written application for a permit<sup>1</sup> must be submitted to the Animal and Plant Health

<sup>1</sup>Application forms for permits are available without charge from the Administrator.

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Inspection Service, Plant Protection and Quarantine, Port Operations Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737-1236. The completed application must include the following information:

(1) The specific type of regulated article to be imported, including the genus and species name of the tree from which the regulated article was derived;

(2) Country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) A description of any processing, treatment or handling of the regulated article to be performed prior to importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemicals employed in treatments;

(5) A description of any processing, treatment, or handling of the regulated article intended to be performed following importation, including the location where any processing or treatment will be performed and the names and dosage of any chemicals employed in treatments;

(6) Whether the regulated article will or will not be imported in a sealed container or in a hold;

(7) The means of conveyance to be used to import the regulated article;

(8) The intended port of first arrival in the United States of the regulated article, and any subsequent ports in the United States at which regulated articles may be unloaded;

(9) The destination and general intended use of the regulated article;

(10) The name and address of the applicant and, if the applicant's address is not within the United States, the name and address of an agent in the United States whom the applicant names for acceptance of service of process; and

c/o the Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737, or local offices of Plant Protection and Quarantine, which are listed in telephone directories.

(11) A statement certifying the applicant as the importer of record.

(b) *Review of application and issuance of permit.* After receipt and review of the application, APHIS shall determine whether it appears that the regulated article at the time of importation will meet either the specific importation requirements in § 319.40-5 or the universal importation requirements in § 319.40-6.

(1) If it appears that the regulated article proposed for importation will meet the requirements of either § 319.40-5 or § 319.40-6, a permit stating the applicable conditions for importation under this subpart shall be issued for the importation of the regulated article identified in the application.

(2) If it appears that the regulated article proposed for importation will not meet the requirements of either § 319.40-5 or § 319.40-6 because these sections do not address the particular regulated article identified in the application, APHIS shall review the application by applying the plant pest risk assessment standards specified in § 319.40-11.

(i) If this review reveals that importation of the regulated article under a permit and subject to the inspection and other requirements in § 319.40-9, but without any further conditions, will not result in the introduction of plant pests into the United States, a permit for importation of the regulated article shall be issued. The permit may only be issued in unique and unforeseen circumstances when the importation of the regulated article is not expected to recur.

(ii) If this review reveals that the regulated article may be imported under conditions that would reduce the plant pest risk to an insignificant level, APHIS may implement rule-making to add the additional conditions to this subpart, and after the regulations are effective, may issue a permit for importation of the regulated article.

(3) No permit will be issued to an applicant who has had a permit withdrawn under paragraph (d) of this section during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal.

(c) *Permit does not guarantee eligibility for import.* Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of first arrival determines that no remedial measures are necessary pursuant to the Plant Protection Act with respect to the regulated article.<sup>2</sup>

(d) *Denial and withdrawal of permits.* Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the person to whom the permit was issued has violated any requirement of this subpart. If the withdrawal is oral, the decision to withdraw the permit and the reasons for the withdrawal of the permit shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been denied or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully denied or withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the permit is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator.

[60 FR 27674, May 25, 1995, as amended at 66 FR 21056, Apr. 27, 2001]

**§ 319.40-5 Importation and entry requirements for specified articles.**

(a) *Bamboo timber.* Bamboo timber consisting of whole culms or canes may be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements of § 319.40-9.

<sup>2</sup> An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements of § 319.40-9.

(b) *Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand—(1) Logs—*

(i) *Requirements prior to importation.* Monterey or Radiata pine (*Pinus radiata*) logs from Chile or New Zealand and Douglas-fir (*Pseudotsuga menziesii*) logs from New Zealand that are accompanied by a certificate stating that the logs meet the requirements of paragraph (b)(1)(i) (A) through (D) of this section, and that are consigned to a facility in the United States that operates in accordance with § 319.40-8, may be imported in accordance with paragraphs (b)(1)(i)(A) through (b)(1)(iii) of this section.

(A) The logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms.

(B) The logs must be debarked in accordance with § 319.40-7(b) prior to fumigation.

(C) The logs and any solid wood packing materials to be used with the logs during shipment to the United States must be fumigated in accordance with § 319.40-7(f)(1), within 45 days following the date the trees are felled and prior to arrival of the logs in the United States, in the holds or in sealable containers. Fumigation must be conducted in the same sealable container or hold in which the logs and solid wood packing materials are exported to the United States.

(D) During shipment to the United States, no other regulated article is permitted on the means of conveyance with the logs, unless the logs and the other regulated articles are in separate holds or separate sealed containers, or, if the logs and other regulated articles are mixed in a hold or sealed container, the other regulated articles either have been heat treated with moisture reduction in accordance with § 319.40-7(d), or have been fumigated in the hold or sealable container in accordance with paragraph (b)(1)(i)(C) of this section.